

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 2.106 of the)	
Commission's Rules to Allocate Spectrum)	ET Docket No. 95-18
At 2 GHz for Use by the Mobile-Satellite)	
Service)	
)	
Amendment of Part 2 of the Commission's)	
Rules to Allocate Spectrum Below 3 GHz)	ET Docket No. 00-258
For Mobile and Fixed Services to Support)	
The Introduction of New Advanced)	
Wireless Services, including Third)	
Generation Wireless Systems)	
)	
Flexibility for Delivery of Communications)	
By Mobile Satellite Service Providers in the)	IB Docket No. 01-185
2 GHz Band, the L-Band, and the 1.6/2.4)	
GHz Bands)	

**CONSOLIDATED REPLY OF
ICO GLOBAL COMMUNICATIONS**

ICO Global Communications (Holdings) Limited ("ICO"), pursuant to Section 1.429(g) of the Commission's rules,¹ hereby responds to oppositions of the Boeing Company ("Boeing"), the Association of Maximum Service Television ("MSTV"), and the National Association of Broadcasters ("NAB") in the above-captioned proceeding.²

Throughout this lengthy proceeding, ICO consistently has warned about the harmful market effects that the substantial up-front cost burden would create for the first

¹ 47 C.F.R. § 1.429(g).

² See Opposition of MSTV and NAB, ET Docket Nos. 95-18 & 00-258; IB Docket No. 01-185 (Mar. 3, 2004); Consolidated Opposition of Boeing, ET Docket Nos. 95-18 & 00-258; IB Docket No. 01-185 (Mar. 3, 2004).

mobile satellite service (“MSS”) entrant in the 1990-2025/2165-2200 MHz (“2 GHz”) band. ICO appreciates the Commission’s efforts to mitigate somewhat that burden and urges the Commission to provide for an equitable allocation of the 2 GHz relocation costs, as well as to establish regulatory certainty by clearly delineating methods and timing for pro rata reimbursement of relocation costs.

The Commission’s newly adopted rules accelerate relocation of broadcast auxiliary service (“BAS”)³ licensees in the 1990-2025 MHz band by requiring BAS relocation out of the band in a single phase rather than two, while permitting BAS relocation in markets outside of the top 30 markets to proceed after commencement of MSS operations. The Commission also deferred consideration of reimbursement procedures until after new services are designated for recently reallocated portions of the band.⁴ MSTV, NAB, the Society of Broadcast Engineers, Inc., and the Radio-Television News Directors Association (collectively, the “BAS Parties”) filed comments or petitions for reconsideration of *Third Report and Order*, seeking to further accelerate BAS relocation by requiring relocation in all BAS markets before commencement of MSS operations. NAB and MSTV also oppose Boeing’s petition for reconsideration proposing to reinstate the Commission’s two-phase BAS relocation plan with certain minor modifications. They further request that the Commission seek additional comments on alternative relocation plans.

ICO strongly objects to the BAS Parties’ unrealistic proposal to further hasten an already accelerated relocation plan and to re-hash arguments that the Commission has

³ As used herein, the term “BAS” will include cable television relay services and local television transmission services, as well as BAS.

⁴ See *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Third Report and Order and Third Memorandum Opinion and Order, 18 FCC Rcd 23638 (2003) (“*Third Report and Order*”).

repeatedly considered and expressly rejected. Additionally, ICO supports the Boeing proposal to slightly revise the two-phase approach because it more specifically addresses the need for timely completion of BAS relocation by MSS entrants, and allows the Commission to develop pro rata reimbursement procedures for services that are new to the 1990-2025 MHz band.

I. FURTHER ACCELERATION OF BAS RELOCATION WOULD BE OVERLY BURDENSOME AND INCONSISTENT WITH THE COMMISSION'S RELOCATION POLICIES

Prior to the adoption of the *Third Report and Order*, ICO argued that notwithstanding the enormous costs involved, mandating a single-phase relocation plan would be premature, at least until the Commission resolves pending petitions for reconsideration of the *Third 3G Order*⁵ and confirms whether to reallocate a portion of the 1990-2025 MHz band to broadband PCS, advanced wireless services, or incumbents displaced from other bands.⁶ ICO noted that mandating a single-phase relocation would unfairly prejudice the outcome of pending petitions for reconsideration for the *Third 3G Order* because it is premised on the assumption that the Commission will not reconsider its reallocation of 2 GHz MSS spectrum.

Even if, however, the Commission re-affirms its reallocation of 2 GHz MSS spectrum, the Commission should reject any revisions to the 2 GHz BAS relocation plan that would impose unrealistic cost burdens on MSS licensees. Accordingly, the

⁵ See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, Third Report and Order, 18 FCC Rcd 2223 (2003) ("*Third 3G Order*").

⁶ See Letter from Suzanne Hutchings, ICO, to Marlene H. Dortch, Secretary, FCC, ET Dkt. No. 95-18, IB Dkt. No. 01-185, and WTB Dkt. No. 00-258 (Oct. 31, 2003).

Commission should reject the BAS Parties' requests that it require simultaneous BAS relocation in all markets before MSS operations begin.

New MSS entrants already struggling to overcome a difficult financing market would be forced to shoulder the additional, extraordinary cost burden of an unnecessarily onerous nationwide relocation.⁷ This cost burden would be imposed long before the new 2 GHz MSS entrants have had a chance to earn a dime of revenue to fund the relocation.

Acknowledging the enormous costs of a simultaneous, nationwide BAS relocation plan, the Commission repeatedly has rejected attempts to require MSS licensees to bear the full up-front costs of BAS relocation in all markets prior to generating any service revenues to fund those costs.⁸ Accordingly, ICO concurs with Boeing that no further consideration of any simultaneous, nationwide BAS relocation proposal is necessary.⁹

To the extent that MSTV and NAB seek advance payment of estimated relocation expenses for markets 31 and above prior to incurring those costs, ICO also concurs with Boeing that their request must be denied.¹⁰ Boeing correctly points out that the Commission's relocation policies require compensation for actual relocation costs, not for estimated relocation costs that will not be incurred for several more years.¹¹

II. BOEING'S PHASED BAS RELOCATION PROPOSAL WOULD BE LEAST DISRUPTIVE AND WOULD PROMOTE SWIFT CLEARING OF THE 2 GHZ BAND BY NEW MSS ENTRANTS

⁷ See *id.* at 2 (noting NAB's and MSTV's relocation cost estimate of at least \$512 million and further noting that relocation costs could be well over \$1 or \$2 billion based on NAB's and MSTV's data).

⁸ See, e.g., *Third Report and Order*, 18 FCC Rcd at 23658-59 ¶¶ 40-41.

⁹ See Consolidated Opposition of Boeing at 7-8.

¹⁰ *Id.* at 9-10.

¹¹ *Id.*; see also *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886 (1992); Second Report and Order, 8 FCC Rcd 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd 7797 (1994).

The Commission's *Third Report and Order* requires the first 2 GHz MSS entrants to bear the up-front costs of relocating all BAS operations in the top 30 markets out of the entire 1990-2025 MHz band, including spectrum reallocated for non-MSS operations.¹² Although 2 GHz MSS licensees may seek reimbursement from later entrants, the Commission has yet to identify the new fixed and mobile services that will operate in the 2 GHz band, thus creating significant uncertainty as to when or how MSS licensees will be reimbursed for a portion of their BAS relocation expenses. This regulatory uncertainty would cripple a new entrant seeking to secure investor support for a capital-intensive MSS network.

Boeing's tailored approach strikes the best balance of mitigating up-front BAS relocation expenses while providing for an orderly transition to the final BAS channel plan. Boeing's proposal also addresses 2 GHz MSS operators' concerns about the burden of full-band relocation and the need to seek reimbursement. Specifically, Boeing proposes that the Commission retain the two-phase process using a revised interim channel plan. Initial MSS entrants would clear the 2005-2023 MHz portion of the band, while BAS incumbents would operate on a slightly narrowed BAS channel 1 and the same 14.5 MHz-wide channels designated for Phase I use under the Commission's original two-phase relocation plan.¹³

A two-step process remains the best means for minimizing the burden on new entrants and for minimizing disruption to the incumbents during relocation. Retaining a

¹² See *Third Report and Order*, 18 FCC Rcd 23658-59 ¶¶ 40-41. ICO notes that petitions for reconsideration of the decision to reallocate portions of the 2 GHz band for non-MSS operations are still outstanding.

¹³ ICO notes that Boeing's proposal would delay the clearing of the globally allocated MSS spectrum at 2000-2005 MHz until the second phase. However, ICO supports Boeing's proposal because, on the whole, it minimizes the up-front cost burden of BAS relocation on MSS operators.

two-phase relocation plan would permit MSS entrants to assume relocation responsibilities specifically targeted to MSS entry, and would help mitigate the uncertainty associated with the reallocation to new but as-yet-undefined services in portions of the 1990-2025 MHz band.

Boeing's proposal offers the additional advantage of more efficiently using spectrum resources during the BAS relocation and requiring the clearing of 2 GHz spectrum on an as-needed basis. In contrast, retaining the approach adopted in the *Third Report and Order* would potentially leave large portions of cleared spectrum fallow for years while the Commission completes the complex process of licensing new services in 1990-2000 MHz and 2020-2025 MHz.

Boeing's proposed modification to the original two-phase BAS relocation plan also would eliminate the primary justification for the Commission's decision to replace the original two-phase plan with a single-phase plan. Specifically, the Commission noted that the first phase of original two-phase BAS relocation plan would clear only 8 MHz of MSS uplink spectrum in the 2 GHz band and would be quickly followed by the second phase, triggered by the entry of the second MSS licensee in the band.¹⁴ Boeing's proposed modification, however, addresses this concern by clearing 15 MHz of MSS uplink spectrum in the 2 GHz band, thus accommodating the entry of 3 new MSS licensees during the first phase while delaying the commencement of the second phase until the fourth MSS licensee is ready to begin operations.

¹⁴ See *Third Report and Order*, 18 FCC Rcd at 23653-55 ¶¶ 30-32.

III. THE COMMISSION SHOULD SWIFTLY ADOPT RULES AND PROCEDURES THAT CLEARLY DELINEATE THE TIMING AND SCOPE OF REIMBURSEMENT OF BAS RELOCATION EXPENSES BORNE BY 2 GHz MSS OPERATORS

ICO reiterates that the Commission should clarify the relocation obligations of any new services to be licensed in the 1990-2025 MHz band, particularly if the Commission retains an accelerated single-phase BAS relocation plan. If the Commission confirms its 2 GHz reallocation decision, the BAS relocation plan as adopted will accelerate cost burdens on initial MSS entrants without delineating the timing or scope of reimbursement. The *Third Report and Order* clearly indicates that these greater obligations should be borne not only by new MSS entrants but also by any other new 2 GHz entrants that will benefit from BAS relocation (e.g., advanced wireless licensees, displaced MDS licensees, displaced federal government operators, and Nextel). The Commission states that these matters will be addressed in future proceedings.¹⁵ It should initiate these proceedings swiftly to avoid any further delays due to regulatory uncertainty, and any further proposals should set forth explicit procedures by which new 2 GHz services would contribute their pro rata share of BAS relocation costs.

¹⁵ *Id.* at 23644-45 ¶ 10.

IV. CONCLUSION

Based on the foregoing, ICO urges the Commission to deny the NAB Parties' petitions for reconsideration and grant Boeing's petition for reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify that a copy of the foregoing **Reply to Opposition** has been served this 15th day of March 2004 via First Class U.S. Mail on the following:

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